

Message Text

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ACTION EB-08

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CIAE-00 COME-00 DODE-00 FRB-01 H-02 INR-10 INT-05

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SS-15 STR-07 ITC-01 TRSE-00 ICA-20 SP-02 SOE-02

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TO SECSTATE WASHDC 9089

INFO AMEMBASSY OTTAWA

AMEMBASSY BRUSSELS

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BRUSSELS FOR USEEC

PASS STR ELECTRONICALLY

E.O. 11652: N/A

TAGS: ETRD, GATT, CA, EEC

SUBJECT: GATT PANEL ON LEAD AND ZINC

1. WE DRAW WASHINGTON'S ATTENTION TO GATT PANEL REPORT ON LEAD AND ZINC (GATT DOCUMENT L/4636) WHICH WAS ISSUED 28 APRIL. ALTHOUGH U.S. WAS NOT DIRECTLY INVOLVED IN THIS DISPUTE BETWEEN THE EC AND CANADA, THE FINDING OF THE GATT PANEL HAS IMPLICATIDNS FOR TRADE NEGOTIATIONS CONDUCTED UNDER ARTICLE XXVIII OF THE GATT.

2. THE ISSUE INVOLVES THE EC CONVERSION OF SPECIFIC RATES ON LEAD AND ZINC TO AD VALOREM RATES, AND THE BASIS FOR THAT CONVERSION. THE COMMUNITY INVOKED ARTICLE XXVIII:5 IN 1972 AND IN DECEMBER 1974 NOTIFIED THE GATT THAT IT WISHED TO ENTER INTO NEGOTIATIONS TO

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MODIFY DUTIES ON UNWROUGHT LEAD AND UNWROUGHT ZINC. IN 1975 THE EC ENTERED INTO NEGOTIATIONS WITH AUSTRALIA AND CANADA CONCERNING THESE CHANGES OF SPECIFIC TO AD VALOREM RATES. AUSTRALIA WAS SATISFIED BUT CANADA WAS NOT. IN DECEMBER 1975 THE COMMUNITY NOTIFIED THE GATT OF THE NEGOTIATIONS AND ON JANUARY 1, 1976, PLACED INTO EFFECT THE NEW DUTIES. IN MAY 1976, CANADA NOTIFIED THE CPS

THAT IT CONSIDERED THE FINAL OFFER OF THE COMMUNITY, WHICH HAD SUBSEQUENTLY BEEN IMPLEMENTED, TO BE INADEQUATE ESPECIALLY ON ZINC. CANADA ALSO NOTIFIED, UNDER PARA 3 OF ARTICLE XXVIII, THE WITHDRAWAL OF THE BINDINGS ON CANNED MEATS, LIQUEURS, VERMOUTH, APERITIFS AND CORDIAL WINES, AND WIRE OF IRON AND STEEL. THE EC SUBSEQUENTLY BROUGHT THE ITEM TO THE COUNCIL UNDER ARTICLE XXIII, AND A PANEL WAS ESTABLISHED IN MARCH 1977 TO HEAR THE CASE.

3. THE DISPUTE CENTERED ON THE QUESTION OF AN APPROPRIATE BASE PERIOD FOR THE CONVERSION OF THE SPECIFIC DUTIES TO AD VALOREM RATES. THE COMMUNITY CHOSE THE PERIOD 1971-73 AS THE LATEST AVAILABLE, AND ARGUED THAT GATT PRECEDENCE SUPPORTED THEIR VIEW THAT THE LATEST THREE-YEAR PERIOD SHOULD BE USED. CANADA ARGUED THAT DETERMINATION OF THE BASE PERIOD WAS A MATTER OF NEGOTIATION BETWEEN THE PARTIES AND DISAGREED WITH THE EC THAT A THREE-YEAR PERIOD HAD TO BE USED, NOTING THAT THE EC HAD USED A TWO-YEAR PERIOD IN ITS NEGOTIATIONS WITH CANADA UNDER ARTICLE XXIV:6. THE CANADIAN THOUGHT THAT A CONVERSION ON THE BASIS OF ONE YEAR, 1974, WOULD BE MORE CONSISTENT WITH THE EC'S OBLIGATIONS UNDER XXVIII:2 TO MAINTAIN A GENERAL LEVEL OF CONCESSIONS NOT LESS FAVORABLE TO TRADE THAN PROVIDED FOR PRIOR TO THE NEGOTIATIONS.

4. BRIEFLY SUMMARIZED, THE PANEL'S FINDINGS INCLUDE THE FOLLOWING:
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(A) ARTICLE XXVIII IS THE APPLICABLE ARTICLE FOR NEGOTIATIONS RELATING TO THE CONVERSION OF SPECIFIC TO AD VALOREM RATES.

(B) IN THE ABSENCE OF AN AGREEMENT BETWEEN THE PARTIES ON AN APPROPRIATE BASE PERIOD, THE LATEST THREE YEARS SHOULD BE USED.

(C) SINCE NEGOTIATIONS WERE NOT ENTERED INTO UNTIL 1975, 1974 WAS A PERIOD PRIOR TO THE BEGINNING OF THE NEGOTIATIONS. ALTHOUGH EC STATISTICS FOR 1974 WERE NOT AVAILABLE AT THE BEGINNING OF THE NEGOTIATIONS, THEY DID BECOME AVAILABLE DURING THE NEGOTIATIONS AND THE COMMUNITY SHOULD THEREFORE HAVE TAKEN INTO ACCOUNT TRADE FIGURES FOR 1974. THUS, THE BASE PERIOD SHOULD BE 1972-1974.

(D) IN THE ABSENCE OF SPECIFIC AGREEMENT AMONG THE PARTIES, THE EC SHOULD BASE ITS AD VALOREM EQUIVALENT OF A SPECIFIC DUTY ON TOTAL IMPORT FIGURES. THUS, THE AD VALOREM RATE FOR ZINC SHOULD HAVE BEEN BOUND AT 2.64 RATHER THAN THE 3.5 LEVEL SET BY THE COMMUNITY.

(E) IN LIGHT OF THESE CONCLUSIONS, CANADA WAS ENTITLED TO WITHDRAW CONCESSIONS. THE PANEL, HOWEVER, BELIEVED THAT THE WITHDRAWAL OF CONCESSIONS SHOULD HAVE BEEN LESS THAN THE EQUIVALENT OF THE TOTAL EXPORT VOLUME OF ZINC TO THE COMMUNITY AS ACCOUNT SHOULD HAVE BEEN TAKEN OF THE REBINDING OF THE EC DUTY. THE PANEL ALSO THOUGHT THAT THE RIGHT OF RETALIATION SHOULD BE RELATED TO THE ACTUAL DAMAGE SUFFERED BY CANADA AND THAT THE WITHDRAWALS THEREFORE SHOULD HAVE BEEN BASED ON THE DIFFERENCE BETWEEN THE AD VALOREM EQUIVALENT OF THE SPECIFIC RATE CALCULATED ON IMPORTS FROM CANADA ONLY AND THE NEW AD VALOREM RATE. ALSO, CREDIT SHOULD HAVE

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BEEN GIVEN TO THE FACT THAT THE EC AD VALOREM RATE ON LEAD HAD BEEN FIXED AT A RATE OF DUTY LOWER THAN THE INCIDENCE ON IMPORTS FROM CANADA. THE PANEL REFRAINED, HOWEVER, FROM MAKING A QUANTITATIVE ASSESSMENT.

(F) FINALLY, THE PANEL FOUND THAT CANADA'S RETALIATORY ACTION SHOULD BE WITHDRAWN AS SOON AS THE COMMUNITY DECREASES ITS TARIFF ON ZINC OR MAKES TARIFF CONCESSIONS ON OTHER PRODUCTS OF INTEREST TO CANADA. VANDEN HEUVEL

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